

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
Western Division
No. 5:15-cv-00097-BO

KIRSTEN MESSMER,)
Plaintiff)
)
v.)
)
DONNIE HARRISON, in his Official)
capacity as Sheriff of Wake County,)
North Carolina, PAT MCCRORY, in)
his official capacity as Governor of)
North Carolina, ROY COOPER, in his)
official capacity as Attorney General)
of North Carolina, and FRANK L.)
PERRY, in his official Capacity as)
Secretary of the North Carolina)
Department of Public Safety.)
Defendants)

MOTION TO DISMISS
COMPLAINT
FED. R. CIV. P. 12

NOW COME Defendants Pat McCrory, Governor of the State of North Carolina, Roy Cooper, Attorney General of North Carolina, and Frank L. Perry, Secretary of the North Carolina Department of Public Safety each in their official capacities, by and through Special Deputy Attorney General Hal F. Askins, and Assistant Attorney General J. Joy Strickland and move this Court to dismiss this matter with prejudice pursuant to Rules 12(b)(1), 12(b)(2) and 12(b)(6) of the Federal Rules of Civil Procedure. Defendants' Motion to Dismiss should be granted on the following grounds:

1. The Complaint must be dismissed pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction, as Defendants are immune from suit under the Eleventh Amendment.

2. The Complaint must be dismissed pursuant to Rule 12 (b)(2) and 12 (b)(6) of the Federal Rules of Civil Procedure for lack of personal jurisdiction over all named Defendants, as Plaintiff has alleged no facts to establish that the named Defendants constitute “persons” under 42 U.S.C. § 1983, such that personal jurisdiction is conferred.

3. The complaint must be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief may be granted, as Plaintiff has not stated facts or otherwise shown that Defendants have a sufficient connection to the enforcement of NCGS Chapter 14, Article 54B to abrogate their Eleventh Amendment immunities.

WHEREFORE, Defendants move the Court for an Order dismissing all of Plaintiff’s claims, with prejudice, pursuant to Rules 12(b)(1), 12 (b)(2), and 12(b)(6) of the Federal Rules of Civil Procedure.

Respectfully submitted, this the 6th day of April, 2015.

Roy Cooper
ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing MOTION TO DISMISS with the Clerk of Court using the CM/ECF system, and served a copy on the following by depositing same in the United States mail, postage prepared, addressed to:

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This the 6th day of April, 2015.

/s/ Hal F. Askins
Hal F. Askins
Special Deputy Attorney General